IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

THURSDAY, THE 14TH JUNE 2007 / 24TH JYAISHTA 1929

CRL.A.No. 212 of 2002()

CC.415/1996 of JUDL.MAGISTRATE OF FIRST CLASS COURT, ALATHUR

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APPELLANT: COMPLAINANT:

GEORGE PHILIP, S/O.PHILIP,
ELANCHIKKAL HOUSE, KALLINAGAL PADAM,KANNAMBRA,
ALATHUR.

BY ADVS. SRI.P.VIJAYA BHANU
SRI.P.M.RAFIQ

RESPONDENTS: ACCUSED AND STATE:

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1. MOHANDAS, S/O. KUNCHELAN,
PULIKKALVEETTIL, KALLINGALPPADAM, KANNAMBRA,
ALATHUR.

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.SAJAN VARGHEESE K.
SRI.M.P.LIJU

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 14/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.THANKAPPAN, J.

CRL. APPEAL NO. 212 OF 2002

Dated this the 14th day of June, 2007

JUDGMENT

This appeal is filed against the judgment in C.C. No.415 of 1996 on the file of the Judicial First Class Magistrate's Court, Alathur. The complaint was filed alleging that the accused - first respondent herein committed offence punishable under Section 420 I.P.C.

2. The case of the complainant - first respondent before the court below was that the accused borrowed money from him on several occasions and in discharge of the said liability the accused issued Ext.P1 cheque dated 9.9.1996 for an amount of Rs.1,80,000/- in favour of the complainant which when presented to the bank for encashment was returned with the endorsements " drawer's signature differs , account stands closed". On getting intimation regarding dishonour of the cheque, a lawyer's notice was caused to the accused. The accused received the notice and gave Ext.P7 reply denying the allegations and stated that he had no transaction with the complainant which led to the issuance of Ext.P1

cheque. Since the amount covered by the cheque was not repaid even after receipt of notice, the appellant filed the complaint alleging commission of offence punishable under Section 420 I.P.C. To prove the case against the accused, the complainant was examined as PW.3 and two other witnesses were examined as PWs.1 and 2 and Exts.P1 to P7 were produced. No oral or documentary evidence was adduced on the side of the defence. After closing the evidence on the side of the complainant, the accused was questioned under Section 313 Cr.P.C. He denied the allegations contained in the complaint. After considering the entire evidence adduced by the complainant and the documents produced, the trial court found that the complainant failed to prove that the cheque in question was signed and issued by the accused and hence acquitted him.

3. This Court heard the learned counsel appearing on either side. Learned counsel appearing for the appellant submits that the trial court ought to have found that the cheque in question was issued by the first respondent in discharge of an amount of Rs.1,80,000/- which he had received from the appellant on several occasions beginning from 1994 onwards. Counsel further submits that the trial court ought to have found that the first respondent cheated the appellant by issuing a cheque which belonged to the account of one Jayakumar and thereby committed offence

punishable under Section 420 I.P.C.

4. Before proceeding with the matter, it is advantageous to consider Section 420 I.P.C. which defines cheating as follows:

> "**420. Cheating and dishonestly inducing delivery of property.--**Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

5. The case set up by the appellant before the court below was that the first respondent had borrowed money from him on several occasions and finally a total amount of Rs.1,80,000/- was due to him. The further case of the appellant was that the cheque issued by the first respondent in discharge of the said liability actually belonged to the account of one Jayakumar. After considering the entire evidence adduced by the appellant, the trial court found that there was no evidence to show that the first respondent received an amount of Rs.1,80,000/- from the appellant. No eye-witness has been examined before the court below. The trial court

also found that Ext.P4 agreement entered into between PW.2 and the accused reveals a different case which would also show that the appellant failed to prove the case against the first respondent. In the above circumstances, this Court is of the view that the finding entered by the court below is based on evidence and the impugned judgment requires no interference.

The Crl. Appeal is accordingly dismissed.

(K.THANKAPPAN, JUDGE)

sp/

K.THANKAPPAN, J.

CRL.A.NO.212/2002

JUDGMENT

14TH JUNE, 2007